

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL WILLIAMS,

Plaintiff,

vs.

MARKS, *et al.*,

Defendants.

3:17-cv-00355-MMD-WGC

ORDER

Re: ECF No. 27

Before the court is Plaintiff's Ex Parte Motion for Appointment of Counsel (ECF No. 27). Plaintiff states he "is physically impaired. Plaintiff suffers from a sever (sic) back pain that restricts Plaintiff from sitting, bending forward and wrilling (sic) for any length of time, which si the crux of Plaintiff's current litigation." (*Id.* at 2.) Plaintiff further contends he has "recently been prescribed medication for the pain that causes mental fogginess and drowziness (sic) without any form of concentration." (*Id.*)

A litigant in a civil rights action does not have a Sixth Amendment right to appointed counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). In very limited circumstances, federal courts are empowered to request an attorney to represent an indigent civil litigant. The circumstances in which a court will grant such a request, however, are exceedingly rare, and the court will grant the request under only extraordinary circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

A finding of such exceptional or extraordinary circumstances requires that the court evaluate both the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to articulate his claims

1 in light of the complexity of the legal issues involved. Neither factor is controlling; both must be viewed
2 together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991), *citing Wilborn*,
3 *supra*, 789 F.2d at 1331. Plaintiff has shown an ability to articulate his claims. (ECF Nos. 1, 4, 27, 28.)
4 He has not adequately addressed the factor whether he will likely succeed in the prosecution of his civil
5 rights action.

6 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

7 If all that was required to establish successfully the complexity of the
8 relevant issues was a demonstration of the need for development of
9 further facts, practically all cases would involve complex legal issues.
10 Thus, although *Wilborn* may have found it difficult to articulate his
11 claims *pro se*, he has neither demonstrated a likelihood of success on the
12 merits nor shown that the complexity of the issues involved was
13 sufficient to require designation of counsel.

14 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying the
15 request for appointment of counsel because the Plaintiff failed to establish the case was complex as to
16 facts or law. 789 F.2d at 1331.

17 The substantive claims involved in this action are not unduly complex. Plaintiff's Complaint was
18 allowed to proceed alleging an Eighth Amendment claim for deliberate indifference to a serious medical
19 need against Defendants Baca, Marks, Melissa and Ward and a Fourteenth Amendment claim for
20 interference with access to the grievance process against Defendant Ward. (ECF No. 3 at 9.) These
21 claims are not so complex that counsel needs to be appointed to prosecute them.

22 Similarly, with respect to the *Terrell* factors, Plaintiff has again failed to convince the court of
23 the likelihood of success on the merits of his claims.

24 While any *pro se* inmate such as Mr. Williams would likely benefit from services of counsel, that
25 is not the standard this court must employ in determining whether counsel should be appointed.
26 *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

27 The United States Supreme Court has generally stated that although Congress provided relief for
28 violation of one's civil rights under 42 U.S.C. § 1983, the right to access to the courts is only a right to
bring complaints to federal court and not a right to discover such claims or even to litigate them
effectively once filed with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

///

1 The court does not have the power "to make coercive appointments of counsel." *Mallard v. U. S.*
2 *Dist. Ct.*, 490 US 296, 310 (1989). Thus, the court can appoint counsel only under exceptional
3 circumstances. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) [cert den 130 S.Ct. 1282 (2010)].
4 Plaintiff has not shown that the exceptional circumstances necessary for appointment of counsel are
5 present in this case.

6 In the exercise of the court's discretion, it **DENIES** Plaintiff's Ex Parte Motion for Appointment
7 of Counsel (ECF No. 27).

8 The parties should be aware of the following:

- 9 1. That they may file, pursuant to 28 U.S.C. §636(b)(1)(A) and Rule IB 3-1 of the Local
10 Rules of Practice, specific written objections to the court's order within fourteen (14)
11 days after service of the order. These objections should be titled "Objections to
12 Magistrate Judge's Order" and should be accompanied by points and authorities for
13 consideration by the District Court.
- 14 2. That this Order is not an appealable order and that any notice of appeal pursuant to Rule
15 4(a)(1), Fed. R. App. P., should not be filed until entry of the District Court's judgment.

16 **IT IS SO ORDERED.**

17 DATED: March 14, 2019.

18
19 
20 WILLIAM G. COBB
21 UNITED STATES MAGISTRATE JUDGE
22
23
24
25
26
27
28